

To: Harvey, Judy (ENRD)[JHarvey@ENRD.USDOJ.GOV]
From: Christopher J. Neary
Sent: Mon 6/23/2014 5:58:36 PM
Subject: California River Watch v. City of Willits
2014-06-23 Ltr to Honorable Vince Chhabria.pdf

Dear Ms. Harvey:

Attached is a letter to the District Judge in the above matter. We attempted to intervene in the case and Judge Chen denied the petition without prejudice, but noted that he expected that we would be offered an opportunity to comment on the consent decree.

The parties attempted to cut us out of comment by entering into a private settlement agreement and seeking dismissal of the case. As can be seen the settlement resembles a consent decree in that it imposes duties upon the City of Willits to be monitored by the Citizen's Plaintiff.

Although our issues with the City of Willits relate to our contract which is subject to pending litigation in state court, it is noteworthy that the complaint alleged that the City constructed ponds which are discharging partially treated wastewater to the groundwater without a permit in amounts which might be as high as 100 million gallons per day. Our expert witness testified in early April of this year in the state case that approximately 100 million gallons per day are being discharged to groundwater. Although that is relevant to the state case it is more relevant to the federal case. The City denies such, but has not provided any data other than pump records which has been shown to have a 81,000,000 gallon reporting error.

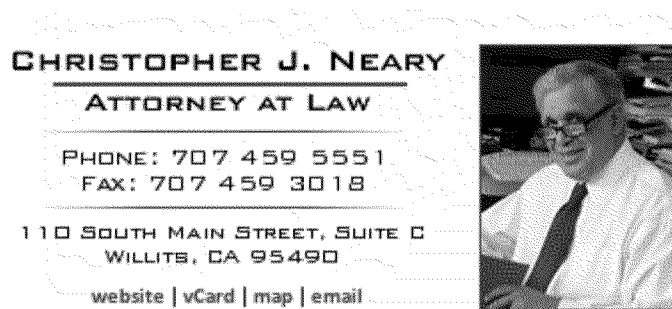
In that I have just received this settlement I have not had an opportunity to research the preclusive effect of the settlement agreement, if any, upon third parties, or the EPA and its designee in enforcing the clean water act. The remedial measure---testing surface water some distance away in accord with recommendations yet to be developed---does not address groundwater contamination. If this settlement is at least arguably likely to have preclusive effect upon the government, or other citizen enforcers of the CWA, then it is something that you should at least take a look at the matter.

If there is no preclusive effect –under state law as provided in the settlement agreement- and you are confident of that, then it is something that you can ignore. I just don't know the

answer to the question as to whether a private consent decree would be deemed to be used as a shield.

Kind regards,

C. J. Neary



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